

EXHIBIT “7”

IN THE CIRCUIT COURT OF
DALE COUNTY, ALABAMA

REGIONS BANK,)
)
 PLAINTIFF,)
)
 VS.) NO. CV-04-251M
)
 SUNSHINE CAMPING CENTER,)
 INC., JON K. WILLIAMS,)
 ET AL.,)
)
 DEFENDANT..)

* * * * *

The following is an excerpt of the trial in the
above case which was held May 1 - 4, 2006, at the
Dale County Courthouse, Ozark, Alabama, before The
Honorable Kenneth W. Quattlebaum.

A P P E A R A N C E S

FOR THE PLAINTIFF:

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FOR THE DEFENDANT SUNSHINE CAMPING CENTER, INC.

HON. L. MERRILL SHIRLEY
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FOR THE DEFENDANT JON K. WILLIAMS:

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1 CHARGE CONFERENCE

2 THE COURT: So with that we'll look
3 at the plaintiff's proposed charges. I've
4 glanced through those that have been
5 requested by both parties. And there are
6 some duplications, and we'll get to those
7 in the defendant's requested charges.
8 First of all as to charge number 1 --

9 MR. SMITH: Your Honor, these are of
10 the plaintiff's charges, plaintiff's
11 requested?

12 THE COURT: Yes, sir.

13 MR. SMITH: Okay. Thank you.

14 MR. SHIRLEY: And, Judge, I didn't
15 notice until I started reviewing, but mine
16 should just be numbered chronologically, I
17 left the number off, when you get to them.

18 THE COURT: That's not a problem. We
19 can --

20 MR. SHIRLEY: If you'll just identify
21 them as number 1 through whatever they are
22 as we go along.

23 THE COURT: I guess the best way to
24 address this is just, Mr. Shirley, if you
25 have an objection to the proposed charge,

1 you state your objection and I'll make a
2 decision unless --

3 MR. SHIRLEY: All right.

4 THE COURT: -- my inclination is not
5 to give it, and then I'll just announce
6 that. And then, Mr. Smith, you and
7 Mr. Knight can address it.

8 MR. SHIRLEY: Let me ask you -- not
9 ever trying a case, a jury case, with
10 you -- I know like number 1 it shows it's
11 the Alabama pattern jury instruction. And
12 if, in fact, that jury instruction was
13 given, you know, in the general charges by
14 the Court, then, you know, I would object
15 to it being given the second time.

16 THE COURT: Yeah, I won't do that.

17 MR. SHIRLEY: Okay.

18 THE COURT: After having reviewed the
19 requested charges, I believe that they
20 adequately cover all the required charges
21 unless y'all have a request for an
22 additional charge. Now, I do have some
23 introductory charges, but they don't go to
24 the specific causes of action.

25 MR. SHIRLEY: We don't object to

1 number 1..

2 THE COURT: Okay. Number 1 will be
3 given.

4 MR. SHIRLEY: And number 2 we object.

5 THE COURT: You do object?

6 MR. SHIRLEY: Yes, sir, because
7 although it might be -- notice it says
8 modified. I would submit to the Court
9 that it's inadequate because it doesn't
10 have the qualifying language to associate,
11 you know, what is enumerated that's
12 supposed to be found under the facts which
13 have been presented in this case..

14 MR. SMITH: Our response, Your Honor,
15 would be we'd be satisfied for the Court
16 to give pattern charge 3.06 as it exists
17 in the book.

18 THE COURT: Okay. Well, that charge
19 is different than the one you requested.
20 Well, let me see. Let me check the
21 update, I guess, before I make that
22 statement.

23 MR. SMITH: I'll tell you what. Let
24 me -- I need to get the book. I've got my
25 book here.

1 THE COURT: Oh, I see. Okay. Yeah.

2 MR. SMITH: Your Honor, the only
3 reason -- the material change is the
4 wrongful acts or omissions. We have both
5 negligent and wanton counts in this
6 complaint and that was the purpose of the
7 modification. But, Your Honor, we don't
8 have an objection to pattern charge 3.06
9 being given with negligent acts or
10 omissions of his agent done within the
11 scope of his employment. That's what the
12 pattern says.

13 THE COURT: All right. Any objection
14 to that?

15 MR. SHIRLEY: No, sir.

16 THE COURT: All right. I'm just
17 gonna modify, then. Where it says
18 wrongful, I'm gonna insert negligent.
19 Okay. Number 3.

20 MR. SHIRLEY: I don't believe that
21 it's a proper charge. Ostensible
22 authority or apparent authority as
23 interpreted there applies to the
24 substantial evidence in this case.

25 MR. SMITH: Your Honor, our reason

1 for requesting that charge has to do with
2 the fact that from November/December of
3 '02 up until January of '04, Sunshine
4 never notified the bank that there was
5 any -- that Mr. Williams was no longer
6 authorized to assign contracts.

7 THE COURT: Court will give that
8 charge.

9 MR. SHIRLEY: Judge, the point I'm
10 trying to make is he just said that was an
11 omission. And this says by acts. Doesn't
12 say anything about omissions or failing to
13 do something. It says definitive
14 evidence. Ostensible authority, apparent
15 authority is a peculiar animal of agency
16 law. And he says that what the -- what
17 they're trying to say by their facts is
18 that when you didn't tell them what went
19 on, that that's supposed to be evidence
20 of apparent authority. Well, negative
21 conduct or no conduct or omission is not
22 something that can be apparent authority.

23 MR. SMITH: Then, Your Honor, to
24 clear up any confusion Mr. Shirley may
25 have, they, Sunshine, provided the

1 document -- I can't recall the number,
2 it's out of Plaintiff's Exhibit 1 -- that
3 says these individuals are authorized to
4 assign contracts on behalf of Sunshine.
5 The Court will recall both Mr. Williams
6 and Mr. Borland were on that document.

7 THE COURT: You know, I would be
8 willing to modify it by saying his acts,
9 omissions, words, or conduct reasonably
10 interpreted if that --

11 MR. SMITH: That's acceptable to us.

12 THE COURT: I'm gonna give the
13 charge. I just think it's applicable in
14 this case. All right. Number 4, I think
15 it's just the standard --

16 MR. SHIRLEY: Yes.

17 THE COURT: -- pattern charge breach
18 of contract. Any objection?

19 MR. SHIRLEY: No, sir.

20 THE COURT: Pattern 5 is the -- or
21 charge 5 is, I believe, the standard
22 charge for negligence, definition of
23 negligence. Any objection?

24 MR. SHIRLEY: No, sir.

25 THE COURT: Number 6, joint

1 liability, joint several liability.

2 MR. SHIRLEY: Well, that's an
3 apparent clear statement of the law, but
4 it's vague and insufficient as to this
5 case.

6 THE COURT: I would like to hear how
7 this applies in this case, Mr. Smith.

8 MR. SMITH: Your Honor, there is an
9 argument from the defendant Sunshine that
10 Mr. Williams acted outside the scope of
11 his authority. I think the evidence is
12 clear whether Mr. Williams acted outside
13 or within the scope of his authority with
14 Sunshine, he committed negligent acts. If
15 he was, in fact, outside the scope of his
16 authority, then the claims on which we're
17 trying to predicate respondeat superior
18 liability on Sunshine would apply;
19 however, on the negligent hiring,
20 training, and supervision you've got their
21 negligent hiring, training, and
22 supervision -- that is Sunshine -- going
23 along with Mr. Williams's wrongful
24 negligent acts in creating these
25 fraudulent contracts. They're jointly and

1 severally liable for those acts because
2 their -- because the proximate result of
3 that negligence are the damages to our
4 client. Now, obviously we believe that
5 under the evidence the jury could find
6 that these acts were committed within the
7 line and scope of employment. But I think
8 also under the evidence the jury could
9 find they weren't committed within the
10 line and scope of the employment. But
11 because of the wrongful hiring, training,
12 and supervision count they can -- both
13 Sunshine and Mr. Williams can be jointly
14 and severally liable for the damages
15 caused to the bank.

16 THE COURT: I believe -- because of
17 the facts of this case and the issue that
18 we have about the corporation's liability
19 for the actions of Mr. Williams and the
20 fact that the jury could find that it
21 either is liable or is not liable, I
22 believe this charge could be confusing and
23 I'm going to refuse to give it.

24 MR. SHIRLEY: And, Your Honor, I'm
25 sorry but the --

1 THE COURT: I'm gonna refuse number
2 6.

3 MR. SHIRLEY: Thank you. Insofar as
4 number 7 is concerned, we would just
5 submit that there's insufficient evidence
6 to substantiate wantonness. Appears to be
7 the pattern jury instruction.

8 THE COURT: I'm going to give that
9 charge.

10 MR. SHIRLEY: And same objection to
11 number 8.

12 THE COURT: That charge will be
13 given, also.

14 MR. SHIRLEY: Charge number 9, we
15 object to it on the grounds that it's
16 confusing. We object to it on the grounds
17 that it is being read from the judge.
18 There is no alternative provision in this.
19 There is no basis saying if, in fact, you
20 find by the substantial evidence thus and
21 so, et cetera, et cetera, then -- the form
22 is confusing. It's lengthy. It's wordy.
23 And I think it's overly suggestive as
24 being a charge of hypothesis. Meaning,
25 when you read this it's going to suggest

1 that the jury is supposed to find that
2 fraud has occurred when we submit that is
3 not been established as a matter of law
4 and fact..

5 MR.. SMITH: And, Your Honor, our
6 response would be this is pattern charge
7 18.00. And it says at the end of the
8 first paragraph pattern charge, the fraud
9 charge in the plaintiff's complaint, is --
10 and it puts in brackets here referred to
11 the charges in the complaint and closes
12 the bracket. And all we have done in
13 preparing is as the pattern jury charge
14 suggests, include the misrepresentations
15 and suppressions we assert in our
16 complaint.

17 THE COURT: And then I note that that
18 charge is followed up with the various
19 definitions of willful, and I believe
20 mistaken -- or reckless and then mistaken
21 fraud..

22 MR.. SMITH: Yes, sir, that's correct.

23 THE COURT: Okay. Court will give
24 charge number 9. Objection to 10?

25 MR.. SHIRLEY: I'm sorry, I thought

1 you said that you would give that and the
2 ones that followed.

3 THE COURT: It is my intention to do
4 that, I just would give you an
5 opportunity --

6 MR. SHIRLEY: We would -- just for
7 the record we would object. That would go
8 through --

9 THE COURT: Yeah.

10 MR. SHIRLEY: -- 13?

11 THE COURT: Yeah. I'll be giving 10,
12 11, 12, and 13, yeah.

13 MR. SHIRLEY: Number 14 we object on
14 the grounds that there is no evidence to
15 support the charging of that, because as a
16 matter of law there is not conversion, as
17 we addressed earlier.

18 THE COURT: Court's going to give
19 that charge. Number 15 will be given.
20 Court will give number 16.

21 MR. SHIRLEY: We would object to 17
22 as being vague and incomplete. And it
23 also being overly suggestive that there is
24 something when the question is has the
25 plaintiff proven by the substantial

1 evidence and is the jury able to find from
2 consideration of all the substantial
3 evidence whether or not thus and so. It's
4 not a pattern jury instruction. It's an
5 abstracted statement of the law.

6 MR. SMITH: Your Honor, we would say
7 that there is no pattern jury instruction
8 that applies to our wrongful hiring and
9 training supervision count we've been able
10 to find. This was taken from the Voyager
11 case where the Court stated the law with
12 regard to wrongful hiring, training, and
13 supervision. Your Honor, if the Court
14 wants to insert, as Mr. Shirley has
15 suggested, something that it's the
16 plaintiff's obligation to produce or to
17 satisfy these elements by substantial
18 evidence, we understand that. But we
19 believe this is a correct statement of the
20 law and given the wrongful hiring,
21 training, and supervision count that it's
22 appropriate to be given.

23 THE COURT: Where it says liability
24 depends upon its being established by
25 substantial evidence, that such

1 incompetence was actually known, et
2 cetera, I will modify it to read in that
3 fashion, substantial evidence by the
4 plaintiff. And number 18 will be refused.
5 Nineteen will be given. Twenty will be
6 given. Twenty-one will be given.
7 Twenty-two will be given.

8 MR. SHIRLEY: We would object to
9 that, Your Honor. We respectfully submit
10 that the previous charges that were given
11 adequately qualify what the damages are.
12 And to give this language and read this
13 language to the jury would be suggestive
14 that the Court has directed that they must
15 find under the allegations and argument of
16 the plaintiff and plaintiff counsel that
17 this is to be done, this is another one of
18 those hypothesis.

19 THE COURT: You talking about 22?

20 MR. SHIRLEY: Well, 23.

21 THE COURT: You're referring to 23?

22 MR. SHIRLEY: Yes, sir, I thought you
23 said you were giving 22.

24 THE COURT: I did.

25 MR. SHIRLEY: And remember I've got

1 this vent over my ears --

2 THE COURT: Yeah.

3 MR. SHIRLEY: -- and I apologize.

4 THE COURT: Court will give 23.

5 MR. SHIRLEY: I'm sorry?

6 THE COURT: I will give 23. We'll
7 review the verdict form that was attached
8 in just a minute. Let's look at the
9 defendant's requested charges.

10 MR. SHIRLEY: Are you gonna state
11 that these are charges from the parties or
12 these the charges --

13 THE COURT: I normally don't say
14 anything about that.

15 MR. SHIRLEY: That's what I wondered.

16 THE COURT: Okay. What will be
17 number 1, wantonness definition --

18 MR. SMITH: I think that's already
19 covered, Your Honor.

20 THE COURT: That's what I was
21 thinking. We agree that that's already
22 been given by pattern charge, so I'm going
23 to deny that.

24 MR. SMITH: As to number 2, duty owed
25 negligence and ordinary care, Your Honor,

1 that is a charge from the pattern. And I
2 know the pattern has a very similar
3 charge. We have no objection to that one
4 being given as long as it's a pattern
5 charge.

6 THE COURT: All right. Number 2 will
7 be given. I think we have adequately
8 covered punitive damages.

9 MR. SHIRLEY: That's Number 4?

10 THE COURT: Number 3.

11 MR. SMITH: Three.

12 MR. SHIRLEY: Oh, okay.

13 THE COURT: So I'm going to deny
14 defendant's requested charge number 3.
15 Number 4 on speculation, I would propose
16 to grant that charge.

17 MR. SMITH: Again, we have no
18 objection as long as that's a pattern
19 charge, Your Honor.

20 MR. SHIRLEY: And forgive me but you
21 are giving that?

22 THE COURT: Yes.

23 MR. SHIRLEY: Okay. I'm sorry.

24 THE COURT: I understand. I don't
25 know if it's a pattern charge or not.

1 MR. SHIRLEY: I believe it is. We'll
2 look it up.

3 THE COURT: I think it may be, too.

4 MR. SMITH: We'd say that there's a
5 pattern charge on speculation very similar
6 to that, Your Honor, and as long as it's a
7 pattern charge we understand. But if it's
8 not a pattern charge we do object.

9 MR. SHIRLEY: Eleven twenty-two is a
10 pattern jury instruction. I believe
11 that's where it came from. I asked
12 somebody that helped me prepare this just
13 to go by that number and it appears to be
14 the same thing. Eleven twenty-two.

15 THE COURT: Okay. Yeah.

16 MR. SMITH: Okay.

17 THE COURT: Number 5, jury is the
18 judge of the facts.

19 MR. SHIRLEY: I believe that's a
20 pattern jury instruction as well.

21 THE COURT: And I've already given
22 that in my opening charge as well so I'm
23 going to grant that. I'll grant number 6.
24 Propose to grant number 7.

25 MR. SMITH: Your Honor, I believe

1 that's a pattern charge. And so long as
2 it is a pattern charge I don't have any
3 objection to it.

4 THE COURT: All right, sir. Number 8
5 is a standard charge that the Court gives.
6 I will give it. I believe it may be
7 included in my general charge. So I will
8 give it.

9 MR. SHIRLEY: Number 9 was -- is a
10 jury charge associated with jury verdict,
11 I guess.

12 THE COURT: Is there any objection to
13 9?

14 MR. SMITH: Without knowing, Your
15 Honor, what the plaintiff's verdict form
16 might look like, it's difficult for me to
17 frame an objection one way or the other.
18 And I would request the Court just pass on
19 ruling on this one until we discuss later
20 on what the verdict form might look like.

21 THE COURT: All right. Okay. Number
22 10?

23 MR. SMITH: We do object to that,
24 Your Honor. That is not a pattern charge.
25 I do not believe that is a correct

1 statement of the law. I think what the
2 law says, that any ambiguous provisions in
3 the dealer agreement or contract might be
4 resolved against Regions, but that's not
5 what it says. Says the language used in
6 the dealer agreement is claimed by the
7 plaintiff Regions and is to be construed
8 favorably to the nonmaker defendant
9 Sunshine. I don't believe that's a
10 correct statement of the law, nor do I
11 believe that the second paragraph this
12 dealer agreement will be construed
13 strictly against the plaintiff and
14 liberally in favor of defendant Sunshine,
15 I don't believe that's a correct statement
16 of law.

17 Third paragraph talking about
18 ambiguous provisions, that may be a
19 correct statement of the law. But again,
20 this is not a pattern charge. And to the
21 extent that there is a pattern charge
22 dealing with ambiguous contracts, then we
23 believe that's the appropriate one to
24 give. Going further, we don't believe any
25 of these contracts are in anyway

1 ambiguous.. I mean, I think they're very
2 clear and very fine. Because of that I
3 don't believe it's proper for this charge
4 to be given..

5 MR.. SHIRLEY: And we respectfully
6 submit that that is a correct and proper
7 application of contract law under the law
8 of Alabama.. Any document drafted is to be
9 construed against the maker and liberally
10 in favor of the other party to the
11 agreement, the nonmaker of the document.
12 UCC law, that's insurance contract law,
13 that's contract law. This was taken from
14 a pattern jury instruction that involved
15 how you're supposed to interpret an
16 insurance contract.. And it's the same
17 application, but that's also the general
18 application of law.. And it also, the
19 pattern jury instruction says that it's to
20 be construed strictly against the
21 plaintiff, which is undisputedly the maker
22 of this document, and liberally in favor
23 of defendant Sunshine, which is not the
24 maker, drafter, creator, writer, author of
25 this document. And that the principles

1 should be -- these principles should be
2 employed in doing so. And the contract
3 law -- it will be for the jury to decide
4 if it is ambiguous. But to decide if it's
5 ambiguous they are permitted the
6 flexibility to rely upon it against the
7 maker. And then they are required by
8 law -- if this was a nonjury case it would
9 be the way you would be required to do it,
10 to review -- if you found ambiguous
11 provisions, it's supposed to be construed
12 most strongly against the maker and in
13 favor of the nonmaker, defendant Sunshine.
14 It's a proper, accurate, true statement of
15 the law, and it's appropriate under these
16 facts.

17 THE COURT: I'm gonna give it so that
18 it reads the language used in the dealer
19 agreement is framed by the plaintiff
20 Regions. And then I'm going to go down to
21 the third paragraph, ambiguous provisions
22 of a document will be construed most
23 strongly against the maker, drafter and in
24 favor of the defendant Sunshine.

25 MR. SHIRLEY: And we respectfully

1 except. And so the second paragraph is
2 omitted --

3 THE COURT: Yes, sir.

4 MR. SHIRLEY: -- from your charge?

5 THE COURT: All right. Eleven?

6 MR. SMITH: Your Honor, we do object
7 to that. That is not a pattern charge.
8 That is a charge that's personalized to
9 the facts of this case. It is confusing
10 as it is written. It is in effect an
11 affirmative charge from the Court. I
12 think line and scope is well covered in
13 other charges that the Court has agreed to
14 give, and we believe that it will be
15 improper for the Court to give this charge
16 as it is written.

17 MR. SHIRLEY: That's a simple
18 application of the law of principal and
19 agency, and it has also been established
20 there's a conflict in the evidence to
21 decide whether it is. And this charge is
22 saying to them if you find this. It's not
23 saying they have to find that. But if you
24 do find this, your verdict must be for
25 Sunshine and against the plaintiff.

1 THE COURT: I have a problem making
2 that read correctly. I'm going to deny
3 that charge. Twelve?

4 MR. SMITH: Your Honor, we would
5 object to that one on the same grounds as
6 we did on paragraph 11. We believe it's
7 adequately covered by other charges. We
8 believe it's confusing as written. And
9 the other grounds -- it's covered by other
10 charges and the other grounds we assign
11 this to defendant's Sunshine request for
12 charge number 11.

13 THE COURT: Court's going to deny 12.
14 I'm going to deny 13. I think that's
15 adequately covered by the charge regarding
16 burden of proof. I believe 14 (inaudible)

17 (Reporter asked for
18 clarification.)

19 THE COURT: I believe 14 is
20 adequately covered in other charges. I'm
21 going to deny it as well. Okay. I have
22 drafted a verdict form here that was just
23 taken from your proposal with the
24 inconclusion of punitive damages. So if
25 y'all will just take a look at that and

1 see.

2 MR. SMITH: Thank you, Your Honor.
3 Regions is satisfied with that verdict
4 form, Your Honor.

5 MR. SHIRLEY: Your Honor, we believe
6 first of all that under the way the case
7 has been tried that it is a possibility
8 that the Court could -- the jury could, in
9 fact, find for Jon Williams, against Jon
10 Williams on behalf of the plaintiff, and
11 then find Sunshine Camping to be not
12 responsible or a verdict for defendant
13 Sunshine. And the second part of this
14 uses the plural term defendants, and it
15 does not distinguish. And I guess to make
16 it accurate it would need to be that
17 broken down. And I'm not in the habit of
18 giving suggestive verdict forms to the
19 Court when I give my jury charges --

20 THE COURT: Yeah.

21 MR. SHIRLEY: -- and that's out of
22 the pattern jury instruction.

23 MR. SMITH: Maybe, Your Honor, the
24 thing to do is have two verdict forms, one
25 as to the claims against Sunshine and one

1 as to the claims against Williams..

2 THE COURT: Okay.

3 MR. SMITH: And Regions would be
4 satisfied if there are two verdict forms
5 like that.

6 THE COURT: And then when I give the
7 jury its instruction about filling out
8 this form, I will instruct the jury that
9 they may find -- let's see. Well, let me
10 just ask y'all. Do you think any other
11 directive instructions need to be given --

12 MR. SMITH: If --

13 THE COURT: -- with the two separate
14 verdict forms?

15 MR. SMITH: I know that I will talk
16 about it in my part of closing, Your
17 Honor, if there are two separate forms,
18 and we're gonna ask them to return a
19 verdict for both of them. So I mean, to
20 the extent that that argument may be
21 explanatory. Now, to answer your question
22 directly, we would request that the Court
23 to say if you find in favor of Regions
24 against Sunshine write it here, write
25 whichever you found. If you find in favor

1 of Regions and against Williams here, but
2 you have to fill out both forms.

3 THE COURT: Right. Okay. I will
4 have these identified as to each
5 defendant. In other words, one will say
6 for defendant Sunshine Camping Center and
7 the other for the defendant Jon K.
8 Williams. The name will be mentioned in
9 each verdict form. So it will say: We,
10 the jury, find for the defendant Jon K.
11 Williams and against the plaintiff on one
12 form. On the other form it'll say: We,
13 the jury, find for the defendant Sunshine
14 Camping.

15 MR. SHIRLEY: Against the plaintiff.

16 THE COURT: Yeah. And at the top
17 it'll say for the plaintiff against the
18 defendant and --

19 MR. SHIRLEY: You'll give us a copy
20 to look at that before we make our
21 summation?

22 THE COURT: I will. All right. With
23 the exception of making that correction in
24 the verdict form, then, are we ready to
25 proceed with closing arguments?

1 MR. SMITH: Regions is, Your Honor.

2 MR. SHIRLEY: Yes, Your Honor, I do.

3 THE COURT: It'll be about five
4 minutes probably before.

5 (Break in the proceedings.)

6 MR. SMITH: We're satisfied. I think
7 all of us are, Your Honor.

8 MR. SHIRLEY: We don't have any extra
9 copies of those, do we?

10 THE COURT: No, but we can sure get
11 them.

12 MR. SHIRLEY: I'm not -- I don't
13 think -- I'm just trying to -- I'm not
14 objecting to the form, I'm just not as
15 comfortable using that as I am in some
16 cases. You follow what I'm saying?

17 THE COURT: Uh-huh.

18 MR. SHIRLEY: And that's the only
19 reason I would like to have ... have a
20 copy.

21 THE COURT: If you'll take that in
22 there to Ms. Millard and ask her to
23 make --

24 MR. SHIRLEY: I only need the one ...

25 (The jury entered the

1 courtroom.)

2 THE COURT: Ladies and gentlemen, at
3 this time we're prepared to move forward
4 with our closing arguments, first for the
5 plaintiff.

6 (Closing arguments by Mr.
7 Knight.)

8 (Closing arguments by Mr.
9 Shirley.)

10 (Closing arguments by Mr.
11 Matthews.)

12 THE COURT: Before we go further just
13 let me ask, is there anybody has an urgent
14 need to take a break before we go into the
15 final closing arguments? Okay.

16 Mr. Smith.

17 (Closing arguments by Mr.
18 Smith.)

19 THE COURT: Now, that you've heard
20 all the evidence and the arguments of
21 counsel, it becomes my duty to explain to
22 you the rules of law that you must follow
23 and apply in deciding this case. When I
24 am finished you will go to the jury room
25 and begin your deliberations. In deciding

1 the case you must follow and apply all the
2 law as I explain it to you whether you
3 agree with the law or not. Regardless as
4 to any opinion you may have as to what the
5 law is or ought to be, it would be a
6 violation of your sworn duty to base your
7 verdict upon anything other than the
8 evidence in the case. Also, you are not
9 to single out one instruction alone as
10 stating the law, but must consider the
11 instructions as a whole. You must not let
12 your decision be influenced in anyway by
13 either sympathy for or prejudice against
14 anyone. Both the public and the parties
15 expect that you will carefully and
16 impartially consider all the evidence
17 without prejudice or bias or sympathy and
18 follow the law as stated by the Court to
19 render a just verdict regardless of the
20 consequences. Our system of law does not
21 permit jurors to be governed by bias,
22 prejudice, or sympathy, or by public
23 opinion.

24 In your deliberation you should
25 consider only the evidence, that is the

1 testimony of the witnesses and exhibits
2 that I have admitted in the record;
3 however, as you consider the evidence both
4 direct and circumstantial, you make
5 deductions and reach conclusions which
6 reason and common sense lead you to make.
7 Direct evidence is the testimony of one
8 who asserts actual knowledge of a fact,
9 such as an eyewitness. Circumstantial
10 evidence is proof of a chain of facts and
11 circumstances tending to prove or disprove
12 an ultimate conclusion.

13 Remember that anything the lawyers
14 say is not evidence in the case. The
15 function of the lawyers is to point to
16 those things most significant or most
17 helpful to their side of the case. It is
18 your own recollection and interpretation
19 of the evidence that controls. What the
20 lawyers say is not binding upon you.
21 Also, you should not assume from anything
22 that I may have said or any questions I
23 may have asked that I have any opinion
24 concerning any of the issues before you in
25 this case. Except for my instructions to

1 you on the law you should disregard
2 anything I may have said during the trial
3 in arriving at your decision concerning
4 the facts..

5 Now, in saying that you must consider
6 all of the evidence, I do not mean that
7 you must accept all the evidence as true
8 or accurate. You should decide whether
9 you believe what each witness had to say
10 and how important the testimony was. In
11 making that decision you may believe or
12 disbelieve any witness in whole or in
13 part. Also, the number of witnesses
14 testifying concerning any particular
15 dispute is not necessarily controlling..
16 You may decide that the testimony of a
17 smaller number of witnesses concerning any
18 fact in dispute is more believable than
19 the testimony of a larger number of
20 witnesses to the contrary..

21 In deciding whether you believe or do
22 not believe any witness, I suggest that
23 you ask yourself a few questions. Did the
24 person impress you as one who was telling
25 the truth; did the witness have any

1 particular reason not to tell the truth;
2 did the witness have a personal interest
3 in the outcome of the case; did the
4 witness seem to have a good memory; did
5 the witness have the opportunity and
6 ability to observe accurately the things
7 he or she testified about; did the witness
8 appear to understand the questions clearly
9 and answer them directly; did the
10 witnesses' testimony differ from other
11 testimony or other evidence.

12 You should also ask yourself whether
13 there was evidence tending to prove that
14 the witness testified falsely concerning
15 some important fact or whether there was
16 evidence that at some other time the
17 witness said or did something or failed to
18 say or do something which was different
19 from the testimony he or she gave before
20 you during the trial. You should keep in
21 mind of course that a simple mistake by a
22 witness does not necessarily mean that the
23 witness was not telling the truth as he or
24 she remembers it because people naturally
25 tend to forget some things or remember

1 other things inaccurately. So if a
2 witness has made a misstatement, you need
3 to consider whether that misstatement was
4 simply an innocent lapse of memory or an
5 intentional falsehood. And the
6 significance of that may depend on whether
7 it has to do with an important fact or
8 with only an unimportant detail.

9 Now, this is a civil case. It's not
10 a criminal case. Some of you may know
11 that in a criminal case the burden of
12 proof is beyond a reasonable doubt. This
13 is not the burden of proof in this case
14 because as I said, this is a civil case.
15 The burden is upon the plaintiff, in this
16 case Regions, to reasonably satisfy you by
17 the evidence of the truthfulness of the
18 matters and things claimed before the
19 plaintiff would be entitled to recover.

20 In deciding whether any fact has been
21 proved to your reasonable satisfaction,
22 you may consider the testimony of all of
23 the witnesses regardless of who may have
24 called them and all the exhibits received
25 in evidence regardless of who may have

1 produced them. If the proof fails to
2 establish any essential part of that which
3 is sought to be proved to your reasonable
4 satisfaction, then you should find against
5 the party having the burden of proof.

6 At this time I'm going to give you
7 specific instructions regarding to the
8 legal matters involved in the case. When
9 an agent is engaged to perform a certain
10 service, whatever he does to that end or
11 in furtherance of the employment is deemed
12 to be an act done within the scope of the
13 employment. An employer is liable to
14 others for the negligent acts or omissions
15 of his agent done within the scope of his
16 employment and within the line of his
17 duties. Apparent authority for which a
18 principal is responsible to a third party
19 for the act of his agent is that authority
20 which arises when the principal by his
21 acts, omissions, words or conduct
22 reasonably interpreted causes such third
23 party to believe that authority has been
24 given to an agent to act in his behalf and
25 such authority cannot be established

1 solely by the acts of the agent.

2 The plaintiff in this action sues the
3 defendant for breach of contract. The
4 elements of an action for breach of
5 contract are, one, existence of a contract
6 between plaintiff and defendant; two,
7 performance by the plaintiff; three,
8 defendant's failure to perform; and four,
9 resulting damage to the plaintiff.
10 Negligence means the failure to exercise
11 reasonable care. That is such care as a
12 reasonably prudent person would have
13 exercised under the same or similar
14 circumstances; therefore, negligence is
15 the failure to do what a reasonably
16 prudent person would have done under the
17 same or similar circumstances, or the
18 doing of something which a reasonably
19 prudent person would not have done under
20 the same or similar circumstances.

21 Wantonness is the conscious doing of
22 some act or omission of some duty under
23 knowledge of existing conditions and
24 conscious that from doing -- from the
25 doing of such act or omission of such duty

1 an injury will likely or probably result.
2 Before a party can be said to be guilty of
3 wanton conduct it must be shown that with
4 reckless indifference to the consequences
5 he either consciously and intentionally
6 did some wrongful act or consciously
7 omitted some known duty which produced the
8 injury.

9 When an agent commits wantonness
10 within the line and scope of his
11 employment, his employer is also liable
12 for such wantonness regardless of the
13 employer's lack of actual participation in
14 such wantonness with his agent.

15 Ladies and gentlemen of the jury, the
16 plaintiff in this case is claiming damages
17 from the defendants for an alleged legal
18 fraud practiced upon it by the defendants.
19 The fraud charged in the plaintiff's
20 complaint is that the defendants
21 misrepresented, one, that the Hubert
22 Lawson, Robert McAllister, and Dorothy
23 Peters contracts were genuine and
24 enforceable; two, that the defendants had
25 with regard to the Lawson, McAllister, and

1 Peters contracts fulfilled all obligations
2 and taken all actions required of them
3 under the terms of the dealer agreement;
4 three, that the defendants had sold the
5 items described to the buyers described in
6 the Lawson, McAllister, and Peters
7 contracts, and had provided plaintiff with
8 a valid, enforceable security interest in
9 the items allegedly sold; four, that at
10 the time the defendants entered into the
11 terms of the recreational vehicle dealer
12 agreement the defendants would fulfill the
13 obligations required of them under the
14 recreational vehicle dealer agreement.

15 In addition the fraud charged in the
16 complaint is that the defendant
17 suppressed, one, that the Lawson,
18 McAllister and Peters contracts separately
19 and severally were forged and were
20 otherwise fraudulent; two, that the
21 defendants had not with regard to the
22 Lawson, McAllister and Peters contracts
23 fulfilled the duties and obligations
24 required of them under the terms of the
25 recreational vehicle dealer agreement.

1 The defendants for answer to the complaint
2 say they are not guilty of the charge
3 contained therein.

4 If you are reasonably satisfied from
5 the evidence that the defendants willfully
6 misrepresented a material fact to the
7 plaintiff with the intent to induce
8 plaintiff to act thereon and plaintiff did
9 without knowledge of its falsity act upon
10 said willfulness representation to his
11 injury, then the defendants are guilty of
12 legal fraud. If you are reasonably
13 satisfied from the evidence that the
14 defendants misrepresented a material fact
15 recklessly without knowledge of the truth
16 or falsity thereof and with the intent to
17 induce plaintiff to act and that plaintiff
18 acted upon said reckless misrepresentation
19 to his injury, then the defendants are
20 guilty of legal fraud. If you are
21 reasonably satisfied from the evidence
22 that the defendants innocently or by
23 mistake misrepresented a material fact to
24 the plaintiff thereby inducing action by
25 the plaintiff to his injury, then the

1 defendant would be guilt of legal fraud.
2 If you are reasonably satisfied from the
3 evidence that the defendants concealed
4 material facts from the plaintiff and
5 without his knowledge of such material
6 facts he acted to his injury, then the
7 defendant would be guilty of legal fraud.

8 A conversion is the appropriation --
9 one, the appropriation of the personal
10 property of one person by another to its
11 own use and benefit; or, two, by
12 destruction of one's personal property by
13 another; or, three, the exercise of
14 dominion by another over personal property
15 to the exclusion or in defiance of the
16 owner's right; or, four, withholding the
17 possession of personal property from the
18 owner by another under a claim of title
19 inconsistent with the owner's title.

20 The measure of damages for the
21 conversion of personal property is the
22 value of the property as of the date of
23 the conversion or the value of the
24 property at any time between the date of
25 the conversion of the trial, whichever is

1 greater, with interest at the rate of
2 6 percent per anum from the date of
3 conversion.

4 If you are reasonably satisfied from
5 the evidence that the defendants committed
6 conduct which would amount to a felony,
7 the defendant would be guilty of a civil
8 felony. Alabama Code Section 13-8-3,
9 theft of property in the first degree,
10 provides: A, the theft of property which
11 exceeds \$2,500 in value or property of any
12 value taken from the person of another
13 constitutes theft of property in the first
14 degree. Theft of property in the first
15 degree is a Class B felony. Alabama Code
16 Section 13A-8-192, identity theft,
17 provides: A, a person commits the crime
18 of identity theft if without the
19 authorization, consent, or permission of
20 the victim, and with the intent to defraud
21 for his or her own benefit or the benefit
22 of a third person, he or she does any of
23 the following. One, obtains records or
24 accesses identifying information that
25 would assist in accessing financial

1 resources, obtaining identification
2 documents, or obtaining benefits of the
3 victim; two, obtains goods or services
4 through the use of identifying information
5 of the victim; three, attains
6 identification documents in the victim's
7 name.

8 Identity theft in which there is a
9 financial loss of greater than \$500 or the
10 defendant has previously been convicted of
11 identity theft constitutes theft in the
12 first degree. Identity theft in the first
13 degree is a Class C felony.

14 Alabama Code Section 13A-9-3, forgery
15 in the second degree, provides: A, a
16 person commits the crime of forgery in the
17 second degree if with intent to defraud he
18 falsely makes, completes or alters a
19 written instrument which is or purports to
20 be or which is calculated to become or to
21 represent if completed: One, a deed,
22 will, codicil, contract, assignment, or a
23 check, draft, note, or other commercial
24 instrument which does or may evidence,
25 create, transfer, terminate, or otherwise

1 affect a legal right, interest,
2 obligation, or status; or, two, a public
3 record or an instrument filed or required
4 or authorized by law to be filed in a
5 public office or with a public employee;
6 or, three, a written instrument officially
7 issued or created by public office, public
8 employees, or government agency.

9 B, forgery in the second degree is a
10 Class C felony. Alabama Code 13A-9-6,
11 criminal possession of forged instrument
12 in the second degree provides: A, a
13 person commits the crime of criminal
14 possession of a forged instrument in the
15 second degree if he possesses or utters
16 any forged instrument of a kind specified
17 in Section 13A-9-3 with knowledge that it
18 is forged and with intent to defraud; B,
19 criminal possession of a forged instrument
20 in the second degree is a Class C felony.

21 In the employer and employee
22 relationship the employer is held
23 responsible for his employee's
24 incompetence when notice or knowledge,
25 either actual or presumed, of such

1 unfitness has been brought to him.
2 Liability depends upon its being
3 established by substantial evidence by the
4 plaintiff with affirmative proof that such
5 incompetence was actually known by the
6 employer or that had he exercised due and
7 proper diligence he would have learned
8 that which would charge him in the law
9 with such knowledge.

10 Ladies and gentlemen of the jury, the
11 Court will now instruct you on the law of
12 damages. The burden is on the plaintiff,
13 Regions Bank, to reasonably satisfy you
14 from the evidence of the truthfulness of
15 its claims. If after consideration of all
16 the evidence in this case you are not
17 reasonably satisfied of the truthfulness
18 of the plaintiff's claims, your verdict
19 should be for the defendants. In this
20 event you would go no further. This would
21 end your deliberations.

22 On the other hand, if after a
23 consideration of all the evidence in this
24 case you are reasonably satisfied of the
25 truthfulness of the plaintiff's claims,

1 your verdict should be for the plaintiff,
2 Regions Bank. In this event it will be
3 necessary for you to arrive at an amount
4 to be awarded in the verdict form which I
5 will read to you and describe later in my
6 charge.

7 I now give you the following rules of
8 law to assist you in your deliberations in
9 arriving at an amount in the event you
10 find for the plaintiff. Compensatory or
11 actual damages are allowed and should be
12 awarded where the plaintiff reasonably
13 satisfies the jury from the evidence that
14 plaintiff has been injured or damaged as a
15 proximate result of a legally wrongful act
16 on the part of the defendants. Punitive
17 or exemplary damages are allowed to the
18 plaintiff and may be awarded in the sound
19 discretion of the jury in cases where the
20 plaintiff proves by clear and convincing
21 evidence that the defendant consciously or
22 deliberately engaged in oppression, fraud,
23 wantonness, or malice with regard to the
24 plaintiff.

25 The purpose of awarding compensatory

1 damages is to fairly and reasonably
2 compensate the injured party for the loss
3 or injuries sustained. Compensatory
4 damages are intended as money compensation
5 to the party wronged to compensate him for
6 his injury and other damages which have
7 been inflicted upon him as a proximate
8 result of the wrong complained of.

9 The purpose of awarding punitive or
10 exemplary damages is to allow money
11 recovery to the plaintiff by way of
12 punishment to the defendants and for the
13 added purpose of protecting the public by
14 deterring the defendants and others from
15 doing such wrong in the future. The
16 imposition of punitive damages is entirely
17 discretionary with the jury. Should you
18 award punitive damages, in fixing the
19 amount you must take into consideration
20 the character and degree of the wrong as
21 shown by the evidence in the case and the
22 necessity of preventing similar wrongs.
23 For a plaintiff to be entitled to recover
24 punitive damages the plaintiff must prove
25 by clear and convincing evidence that the

1 defendant consciously or deliberately
2 engaged in oppression, fraud, wantonness,
3 or malice with regard to the plaintiff.
4 Clear and convincing evidence means that
5 when weighed against evidence in
6 opposition will produce in the mind of the
7 trier of fact a firm conviction as to each
8 essential element of the claim and a high
9 probability of the correctness of the
10 conclusion. Oppression means subjecting a
11 person to cruel and unjust hardship in
12 conscious disregard of that person's
13 rights. Fraud means an intentional
14 misrepresentation, deceit, or concealment,
15 or a material fact or of a material fact
16 the concealing party had a duty to
17 disclose which was gross, oppressive, or
18 malicious, and committed with the
19 intention on the part of the defendant of
20 thereby depriving a person or entity of
21 property or legal rights or otherwise
22 causing injury. Wantonness means conduct
23 which is carried on with a reckless or
24 conscious disregard for the rights or
25 safety of others. Malice means the

1 intentional doing of a wrongful act
2 without just cause or excuse either, A,
3 with intent to injure the person or
4 property of another person or entity, or
5 under such circumstances that the law will
6 apply an evil intent.

7 Regions Bank claims that it is
8 entitled to its attorney fees, cost and
9 other litigation expenses it incurred in
10 pursuing this action against the
11 defendants. Attorneys fees, costs, and
12 other expenses of litigation may only be
13 recovered when authorized by statute, when
14 provided in a contract, or in an equitable
15 proceeding where the efforts of an
16 attorney creates a fund out of which fees
17 may be paid.

18 Regions Bank alleges that the
19 recreational vehicle dealer agreement and
20 retail installment contract and security
21 agreements, which it claims to be
22 contracts between the parties, authorizes
23 it to recover its attorneys fees, cost,
24 and other litigation expenses in the event
25 that your verdict is against the

1 defendants. If you find that the
2 recreational vehicle dealer agreement
3 and/or retail installment contract and
4 security agreement is a contract between
5 the parties, and that the defendants
6 breached the contract, you may award
7 Regions Bank the amounts of its attorneys
8 fees and other litigation cost and
9 expenses if you find that attorneys fees,
10 costs, and other litigation expenses are
11 authorized by both or either of the
12 contracts.

13 The duty owed by defendant Sunshine
14 to Regions assignor Union Planters was to
15 exercise reasonable care not to injure or
16 damage it; that is, to exercise such care
17 as a reasonably prudent person would have
18 exercised under the same or similar
19 circumstances. In awarding damages in any
20 case your verdict must not be based on
21 mere speculation or conjecture but must be
22 based upon the evidence and the just and
23 reasonable inferences shown thereby.

24 You will be the sole and exclusive
25 judges of the facts. It will be your duty

1 to attempt to reconcile the testimony of
2 all the witnesses so as to make them all
3 speak the truth if this can be done
4 reasonably. If you cannot reasonably
5 reconcile all of the testimony, it is then
6 your duty to consider the testimony with
7 the view of determining what the true
8 facts are. In so doing you may accept or
9 reject any part of the testimony of any
10 witness and accept only the testimony you
11 consider worthy of belief.

12 In determining what the true facts
13 are from the evidence you may take into
14 consideration any natural interest or bias
15 a witness may have as a result of any
16 connection with the case. You may take
17 into consideration the interest or bias a
18 witness may have -- may have shown while
19 testifying. You may take into
20 consideration the demeanor of any witness
21 as to whether the witness has apparently
22 testified frankly or evasively. You may
23 take into consideration any matter which
24 you would in your everyday affairs in
25 passing upon the truthfulness and accuracy

1 of the testimony. Weigh the testimony in
2 the light of your common observation and
3 experience and reach a verdict that will
4 be based upon the truth as you determine
5 it from all of the evidence.

6 The burden is upon the plaintiff,
7 Regions, to reasonably satisfy you by the
8 evidence of the truthfulness of the
9 matters and things claimed by them before
10 they would be entitled to recover. You
11 are the sole judges of the evidence and of
12 the credibility of the witnesses. You may
13 accept or reject any part of the testimony
14 of any witness, and you should accept only
15 the testimony you consider worthy of
16 belief. In determining the weight to be
17 accorded the testimony of any witness you
18 may consider the demeanor of the witness
19 while on the witness stand, his apparent
20 candor or evasion or the existence or
21 nonexistence of any bias or interest.

22 The language used in the dealer
23 agreement is framed by the plaintiff,
24 Regions. Ambiguous provisions of a
25 document will be construed most strongly

1 against the maker/drafter and in favor of
2 the defendant Sunshine.

3 It is your duty as jurors to discuss
4 the case with one another in an effort to
5 reach an agreement if you can do so. Each
6 of you must decide the case for yourself
7 but only after full consideration of the
8 evidence with the other members of the
9 jury. While you are discussing the case
10 do not hesitate to reexamine your own
11 opinion and change your mind if you become
12 convinced that you were wrong, but do not
13 give up your honest beliefs solely because
14 the others think differently or merely to
15 get the case over with. Remember that in
16 a very real way you are the judges, judges
17 of the facts. Your only interest is to
18 seek the truth from the evidence in the
19 case.

20 When you go to the jury room you
21 should first select one of your members to
22 act as your foreperson. The foreperson
23 will preside over your deliberations and
24 will speak for you here in court.

25 For your convenience the Court has

1 prepared for your use in this case forms
2 of verdict which will be explained to you.
3 No inferences are to be drawn by you from
4 the fact the Court has supplied you with
5 these forms or from the order in which the
6 Court reads them to you. When you have
7 reached a verdict you will select and
8 complete the form which corresponds to
9 your verdict and which is to be signed by
10 your foreperson. All 12 of you must agree
11 on any verdict which you return to court.

12 Now, there are two verdict forms and
13 you must fill out each of the two forms.
14 The first form -- and they're not
15 numbered, I'm just going to read these to
16 you in this random order -- is verdict
17 form, and it says defendant Sunshine
18 Camping Center, Inc. So this will be your
19 verdict with regard to the defendant
20 Sunshine Camping Center, Inc. The top
21 part of this form reads: If after a full
22 and fair consideration of all the evidence
23 you find for the plaintiff, then you
24 should use the following verdict form:
25 We, the jury, find for the plaintiff and

1 against the defendant Sunshine Camping
2 Center, Inc., and assess the plaintiff's
3 damages as follows. Then there's a place
4 for you to write in the amount of
5 compensatory damages and a place for you
6 to write in the amount of punitive damages
7 if you find punitive damages. You'll need
8 to write out the amount in handwritten
9 form and then numerical form so there will
10 be no misunderstanding about what that
11 amount is. If you do not find that the
12 plaintiff is entitled to punitive damages,
13 then of course you would not award
14 punitive damages. But if you do find that
15 the plaintiff is entitled to punitive
16 damages, you must have also found that the
17 plaintiff was entitled to compensatory
18 damages. In other words, you can't award
19 punitive damages without awarding
20 compensatory damages.

21 The bottom part of that form reads in
22 this way: If after a full and fair
23 consideration of all the evidence you find
24 for the defendant Sunshine Camping Center,
25 Incorporated, then you should use the

1 following verdict form: We, the jury,
2 find for the defendant Sunshine Camping
3 Center, Incorporated and against the
4 plaintiff, and then the foreperson would
5 sign below that section.

6 On the other verdict form it is
7 exactly the same with the exception that
8 it is for the defendant Jon K. Williams.
9 It reads: If after a full and fair
10 consideration of all the evidence you find
11 for the plaintiff, then you should use the
12 following verdict form: We, the jury,
13 find for the plaintiff and against the
14 defendant Jon K. Williams and assess the
15 plaintiff's damages as follows. Again
16 there's a place for you to enter
17 compensatory and punitive damages if you
18 find that the plaintiff is entitled. On
19 the bottom of the form, If after a full
20 and fair consideration of all the evidence
21 you find for the defendant Jon K.
22 Williams, then you should use the
23 following verdict form: We, the jury,
24 find for the defendant Jon K. Williams and
25 against the plaintiff and the foreperson

1 would sign that verdict.

2 At this time I'm going to allow you
3 to go back to the jury room that you've
4 been using. You are not officially
5 retired and you should not begin your
6 deliberations until the bailiff brings
7 back to you the exhibits that have been
8 entered in the case and the verdict forms.
9 That will be your signal that you can
10 begin your deliberations. In the meantime
11 perhaps you can go back and take a little
12 break and relax for just a few minutes
13 until we can get that to you. With that
14 I'll excuse the jurors to go back to the
15 jury room.

16 (The jury left the courtroom.)

17 THE COURT: Okay. The Court will
18 hear any matters that need to be brought
19 before it at this time.

20 MR. SMITH: Your Honor, we are
21 satisfied with the Court's charge with one
22 exception. We had requested pattern jury
23 charge 28.08, which was our charge number
24 six, regarding joint and several
25 liability. And in the charge conference

1 the Court indicated that it would not give
2 that charge. We respectfully except to
3 that ruling as we believe given the facts
4 of this case that it is a proper charge;
5 otherwise, we're satisfied.

6 THE COURT: All right. Thank you.
7 Mr. Shirley?

8 MR. SHIRLEY: Yes, sir. We have no
9 further objection. We reincorporate in
10 the jury charge conference our grounds for
11 objection as the basis for the lack of
12 instruction and charges that we went
13 through in the charge conference.

14 THE COURT: All right.

15 MR. SHIRLEY: Adopt that, incorporate
16 it, refile it with this motion.

17 THE COURT: At this time let's
18 address this juror issue. You'll see it's
19 four o'clock. And I would suggest to you
20 that there would be a substantial risk
21 that a verdict might not be reached this
22 evening. And this juror, Deborah Griffin,
23 has provided the Court with a doctor's
24 excuse saying -- let's see: The above
25 lady is the wife of my patient Barney

1 Griffin who is scheduled for neck disc
2 fusion surgery on May the 4, 2006. She
3 should be excused from jury duty to help
4 care for her husband.

5 MR. SMITH: Your Honor, Regions would
6 say that we have no objection to juror
7 Griffin being dismissed and being replaced
8 with juror Skeen, number 163, who was the
9 alternate and who was Regions' last strike
10 in this case.

11 THE COURT: Is there any objection to
12 the Court taking of that action?

13 MR. SHIRLEY: No, sir. Sunshine
14 Camping has no objection.

15 MR. MATTHEWS: No objection.

16 THE COURT: I will do that, then.
17 And I would like all the parties to see
18 the court reporter and review your
19 exhibits and just make a statement on the
20 record that all your exhibits are there
21 and accounted for before we send them back
22 to the jury room.

23 MR. SHIRLEY: I'm satisfied, too. I
24 always feel uneasy when I take them up
25 there to argue that that's an opportunity

1 for something to get lost.

2 MR. SMITH: I'm satisfied that both
3 of the ones offered by plaintiff and
4 offered by defendant Sunshine are present.

5 THE COURT: Ms. Griffin, right here.
6 How are you doing this afternoon?

7 MS. GRIFFIN: I'm fine.

8 THE COURT: You're Barney's wife?

9 MS. GRIFFIN: Yes.

10 THE COURT: Okay. I got your excuse
11 here from the doctor --

12 MS. GRIFFIN: Right.

13 THE COURT: -- saying that you need
14 to be available for his surgery tomorrow.

15 MS. GRIFFIN: In the morning at
16 6 o'clock.

17 THE COURT: Okay. Well, since it's
18 four o'clock and y'all haven't started
19 deliberating yet and we do have an
20 alternate juror which we use just for this
21 very purpose, I'm going to excuse you at
22 this time.

23 (Juror Griffin was excused.)

24 (Jury received the evidence at
25 4:05.)

1 (The following was heard May 4,
2 2006..)

3 THE COURT: Mr. Shirley, if you want
4 to make reference to this document, you
5 can do so.

6 MR. SMITH: If you want to offer
7 it -- both of us can offer it.

8 THE COURT: I'm going to file it.
9 I'm going to --

10 MR. SMITH: You'll make it -- okay.

11 THE COURT: -- file it in the file.

12 MR. SMITH: As long as it makes it in
13 the Court's record, Your Honor.

14 MR. SHIRLEY: It can be a Court
15 exhibit.

16 MR. SMITH: Yeah, Court's exhibit, I
17 think that'd be appropriate.

18 MR. SHIRLEY: On behalf of Sunshine
19 we have been presented a question. We
20 object to the Court answering the
21 question. The question asks for matters
22 that have already been charged to the
23 jury. Any response from the Court to the
24 jury, we find objectionable. We find it
25 objectionable because it would be an

1 invasion of the Court and an apparent
2 suggestion to the jury that the Court is
3 directing them what to do. The verdict
4 form to be entered, the Court spent time
5 telling them what they were supposed to
6 do. They have a document in there that
7 allows for a resolution of the verdict
8 that is consistent with this question, if
9 that's what they want to do. If you were
10 to answer affirmatively or negatively this
11 question that has been asked without a
12 full-blown presentation explanation of the
13 law and how they are to apply the facts to
14 the law, like you spent better than an
15 hour doing yesterday, it would unduly
16 suggest to them that the Court is
17 directing them to enter a verdict of this
18 nature.

19 In all due respect to the Court I
20 know that would not be the Court's intent
21 to make any kind of suggestion, but their
22 deliberations and their question here,
23 they have some commentaries at the bottom
24 that aren't supposed to be answered
25 either. They're just making commentaries.

1 The asterisk at the bottom, the purpose or
2 intent of what they're trying to
3 accomplish..

4 And the point that I'm further making
5 to the Court is you charged them on that..
6 And although the suggestion might be that
7 this is what the jury wants to know, the
8 truth of the matter is nobody can rule out
9 that it isn't something that just one or
10 two of the jurors want to know.. And if,
11 in fact, that's what happens, we
12 respectfully submit that it would be
13 giving undue emphasis to the position as
14 the questions are indicated adverse to
15 Sunshine when they've already been told
16 all this.. And Sunshine believes that the
17 best thing to do would be for the Court to
18 advise them that -- the best thing in my
19 judgment would be for the Court to advise
20 the jury that the Court believes that the
21 instructions into that question are in the
22 record and that at this juncture there
23 will be no response affirmative or
24 negatively.

25 THE COURT: Let me say something here

1 before you make your argument, Mr. Smith.
2 I think Mr. Shirley has a point in
3 reconsidering this about the verdict
4 forms. I believe that if the Court simply
5 states to the jury that a review of the
6 verdict forms themselves should answer
7 this question for them, because the
8 verdict forms say if you're reasonably
9 satisfied from the evidence that the
10 plaintiff is entitled to a verdict against
11 Sunshine, then you would render the
12 following verdict.

13 Before I give them any other
14 instructions other than that, I think it
15 might be the best thing for the Court just
16 to ask them to review the verdict forms,
17 which would actually speak for themselves.

18 MR. SMITH: Your Honor --

19 THE COURT: What do you think about
20 that?

21 MR. SMITH: Your Honor, we would say
22 first that we think given the context of
23 the question -- and the Court has
24 indicated that it will make this note page
25 with this question or questions --

1 actually they're two are written -- on a
2 Court's exhibit to the record. We think
3 under the context of the question as
4 expressed with our intent at the bottom
5 and it goes on that the Court can answer
6 that question without unduly prejudicing
7 the defendant or without giving a charge
8 that says you must find. I think the
9 Court can instruct that under the verdict
10 forms you can find for either or both or
11 neither. It's up to you to make that
12 determination and the verdict forms
13 explain that.

14 So we believe, Your Honor, that it
15 would be appropriate for the Court to
16 answer that question. The Court can
17 answer it in a neutral manner that does
18 not suggest an answer one way or -- excuse
19 me. The Court can charge or answer the
20 question in a neutral manner that does not
21 indicate any direction by the Court as to
22 how the jury should find, but that should
23 the jury find in a certain way, they may
24 do the things that they have asked about
25 in the question.

1 THE COURT: Okay.

2 MR. MATTHEWS: Judge, this may be
3 simplistic but I think the proper thing to
4 tell the jury is that they're the jury and
5 they can do whatever they want to in the
6 parameters of what you instructed them.
7 And that would -- that's a simplistic way
8 to deal with it. But basically you're
9 telling them, yes, they can do that or
10 they can do something else.

11 MR. SHIRLEY: And that's our point on
12 behalf of Sunshine, Your Honor.

13 MR. MATTHEWS: I think that's the
14 fair way to do it, Judge, is say you're
15 the jury, you can do whatever you want to
16 do either way and your -- and you've got
17 forms back there to take care of it. I've
18 had this come up before in another case,
19 same exact.

20 THE COURT: Okay. If you will, let's
21 just bring the -- well, I'll tell you
22 what.

23 MR. SMITH: Can we --

24 MR. MATTHEWS: You can go back there,
25 Judge.

1 MR. SMITH: You can go back there,
2 Judge. I think you can.

3 MR. SHIRLEY: If you --

4 THE COURT: With the court reporter?

5 MR. SMITH: Sure, sure.

6 MR. SHIRLEY: That'd be fine.

7 MR. SMITH: I think that'd be fine.

8 MR. SHIRLEY: We don't have any
9 objection, with this reservation. I
10 guess -- do we know what you're gonna say?

11 THE COURT: Well, I'll let y'all
12 stand right there in the hall and listen
13 to it.

14 (The following was heard in the
15 jury room with the attorneys
16 present.)

17 THE COURT: Okay. Y'all may be
18 seated if you want to. You might want to
19 stand up. You might be tired of sitting
20 down, I don't know. Okay. I have
21 received your questions and I have
22 reviewed them. The first question: Can
23 we award compensatory damages against
24 Sunshine Camping, Inc., in addition to can
25 we award compensatory and punitive damages

1 versus Sunshine Camping Center defendants
2 Jon K. Williams.

3 You have the verdict forms here that
4 I have reviewed with you. And the verdict
5 form states that if after a full and fair
6 consideration of all the evidence you find
7 for the plaintiff, which is Regions Bank,
8 then you should use the following verdict
9 form. Then the verdict form provides:
10 We, the jury, find for the plaintiff and
11 against the defendant Sunshine Camping
12 Center, Inc. and assess plaintiff's
13 damages as follows. And then there's a
14 place for you to fill in compensatory
15 damage and punitive damages.

16 Now, my instruction to you regarding
17 that was that you cannot award punitive
18 damages without awarding compensatory
19 damages. You can based upon your findings
20 as to whether or not punitive damages
21 should be awarded, award compensatory
22 damages and not punitive damages, but you
23 can't do the reverse.

24 And then the same is true with regard
25 to Jon Williams. The verdict form reads

1 the same. If after a full and fair
2 consideration of all the evidence you find
3 for the plaintiff against Jon K. Williams,
4 then you should use the following verdict
5 form: We, the jury, find for the
6 plaintiff against the defendant Jon K.
7 Williams and assess the plaintiff's
8 damages as follows. And then you would
9 determine what damages you're going to
10 assess against defendant Jon K. Williams.
11 And the same explanation, a place there.
12 You can't award punitive without awarding
13 compensatory. You can award compensatory
14 without awarding punitive if that is your
15 decision and your finding.

16 And of course you can also if you
17 find that that the defendant -- if you
18 find after consideration -- full and fair
19 consideration of all the evidence you find
20 for the defendant Jon K. Williams, then
21 you should use the following verdict form:
22 We, the jury, find for the defendant Jon
23 K. Williams. The same would be true with
24 regard to Sunshine Camping Center. If
25 after a full and fair consideration of all

1 the evidence you find for the defendant
2 Sunshine Camping Center, Inc., then you
3 should use the following verdict form:
4 We, the jury, find for the defendant
5 Sunshine Camping Center, Inc., against the
6 plaintiff.

7 I hope that adequately answers your
8 question. I believe that's, you know, the
9 fairest answer that I can give you in
10 fairness to all the parties' concerns. So
11 I'm gonna ask you to continue your
12 deliberation, reviewing the verdict forms
13 if you need to. And I believe they're
14 really self-explanatory as far as the
15 questions that you've asked the Court
16 about.

17 MS. COLLIER: One more question?

18 THE COURT: Well --

19 MS. COLLIER: So either --

20 THE COURT: Go ahead and ask your
21 question.

22 MS. COLLIER: -- or, not both?

23 THE COURT: Yes, you can award the
24 damages against both defendants if that's
25 your finding.

1 MS. COLLIER: Okay. Thank you.
2 (The following was heard in open
3 court.)
4 (The jury entered the
5 courtroom.)
6 THE COURT: Madam foreperson, has the
7 jury reached a verdict?
8 MS. COLLIER: We have, Your Honor.
9 THE COURT: I'm gonna ask you, if you
10 will, just to fold it in half and give it
11 to the bailiff there and let him bring it
12 to me, please. Okay. Now, we only have
13 one verdict form here. We're gonna need
14 the other verdict form as well. Have you
15 reached a verdict with regard to the
16 defendant Jon Williams?
17 MS. COLLIER: We did. All of our
18 judgment will be on that piece of paper.
19 Do I need to sign the second one?
20 THE COURT: Yes, ma'am. I'm going to
21 excuse y'all to go back into the jury
22 room. There has to be a verdict for each
23 defendant.
24 MS. COLLIER: There does? Okay.
25 THE COURT: And so I'm going to

1 excuse y'all at this time to go back to
2 the jury room, and I'm going to give you
3 this verdict form as well.

4 (The jury left the courtroom.)

5 (Break in the proceedings.)

6 (The jury entered the
7 courtroom.)

8 THE COURT: Okay. Madam foreperson,
9 if you would give the bailiff there your
10 verdicts. Okay. I'll now read the
11 verdicts that have been handed to me.
12 First the verdict form Defendant Sunshine
13 Camping Center, Incorporated. We, the
14 jury, find for the plaintiff and against
15 the defendant Sunshine Camping Center,
16 Incorporated and assess the plaintiff's
17 damages as follows: Compensatory
18 \$143,000.79; punitive damages, nothing is
19 entered there. Signed by the foreperson
20 Tammy Parker Collier.

21 On the verdict form for defendant Jon
22 K. Williams: We, the jury, find for the
23 plaintiff and against the defendant Jon K.
24 Williams and assess the plaintiff's
25 damages as follows: \$96,894.32; punitive,

1 no entry made there. Signed by Tammy
2 Parker Collier. Ms. Collier, is this --
3 are these verdicts the verdicts of the
4 jury?

5 MS. COLLIER: Yes, Your Honor.

6 THE COURT: Okay. At this time I
7 would like to express the Court's thanks
8 and appreciation for your service this
9 week. I know it's been a long week. For
10 jurors to have to serve, you know,
11 three-and-a-half days, that's a pretty
12 long term of service here in Dale County.
13 Most cases don't last quite that long, so
14 I know it's been perhaps an inconvenience
15 and a sacrifice for all of you to be away
16 from your homes, your families, and your
17 work for this period of time. But it is a
18 tremendous service that you have given
19 Dale County and the citizens of this
20 community in rendering this service as
21 jurors in this case.

22 Ms. Bludsworth will have a check, a
23 small token of the State's appreciation
24 for your service. She'll be getting that
25 out in the mail to you probably tomorrow.

1 So with that I will excuse you at this
2 time to go about your business. Thank you
3 so much.

4 (Jury dismissed.)

5 THE COURT: With that I will have the
6 file in my office here. The verdict forms
7 will be available for y'all to make a copy
8 of and to get anything else out of the
9 file that you might want at this time.
10 And are there any other matters need to be
11 brought before the Court at this time?

12 MR. SMITH: Regions has nothing
13 further, Your Honor.

14 THE COURT: Thank y'all.

15 (End of Proceedings.)

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REPORTER'S CERTIFICATE

STATE OF ALABAMA

DALE COUNTY

I, Stephanie H. German, Court Reporter and
Notary Public, State at Large, do hereby certify
that the foregoing transcript is a true and correct
reproduction of my machine shorthand notes taken on
said occasion.

WITNESS my hand this the 23rd day of May, 2006.


STEPHANIE H. GERMAN - COURT REPORTER